

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. C14-1038-JCC

ORDER GRANTING MOTIONS TO  
SEAL

This matter comes before the Court on Defendant Amazon's Motion to Seal (Dkt. No. 90) certain documents filed with its Motion for Partial Summary Judgment (*see* Dkt. Nos. 92 and 93), Plaintiff FTC's Motion to Seal (Dkt. No. 107) documents filed with its Motion for Summary Judgment (Dkt. No. 109) and Motion in Limine (Dkt. No. 112), Amazon's Response to the FTC's Motion to Seal (Dkt. No. 140), and the FTC's Reply (Dkt. No. 144).

Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS both motions for the reasons explained herein.

**I. BACKGROUND**

Without reciting the factual background provided in the Court's order on Amazon's Motion to Dismiss (Dkt. No. 14 at 2), the above-captioned matter is brought by the Federal Trade Commission ("FTC") alleging that Amazon's billing of parents and other account holders

1 for in-app purchases made by children “without having obtained the account holders’ express  
2 informed consent” is unlawful under Section 5 of the FTC Act, 15 U.S.C. § 45(n). (Dkt. No. 1, p.  
3 11; *see also* Dkt. No. 48 at 1.)

4 The parties have now submitted motions for summary judgment. (*See* Dkt. Nos. 92, 93,  
5 109, and 138.) Additionally, the parties have filed motions *in limine* with respect to expert  
6 testimony. (Dkt. Nos. 104 and 112.) In conjunction with filing these motions, the parties have  
7 submitted numerous motions to seal materials contained therein. (Dkt. Nos. 90, 107, 148, 154,  
8 166, 180, and 187.) The Court presently addresses the motions to seal at Dkt. Nos. 90 and 107.

## 9 **II. DISCUSSION**

### 10 **A. Standard on Motion to Seal**

11 The Court starts from the position that “[t]here is a strong presumption of public access to  
12 the court's files.” W.D. Wash. Local Civ. R. 5(g)(3). To rebut this presumption, the party seeking  
13 to seal a document must file a motion that includes:

- 14 (A) a certification that the party has met and conferred with all other parties in an  
15 attempt to reach agreement on the need to file the document under seal, to  
16 minimize the amount of material filed under seal, and to explore redaction and  
17 other alternatives to filing under seal; this certification must list the date, manner,  
18 and participants of the conference; and  
19 (B) a specific statement of the applicable legal standard and the reasons for  
20 keeping a document under seal, with evidentiary support from declarations where  
21 necessary.

22 *Id.* Amazon’s present motion does not certify that the parties met and conferred. (*See*  
23 Dkt. No. 90.) However, such a certification is attached in response to the FTC’s Motion to Seal.  
24 (Dkt. No. 142 at 2.) The Court takes it on good faith that the parties have met the requirements of  
25 the local rules prior to filing their motions. If necessary, the Court expects the parties to make  
26 any objections known or, alternatively, to file the missing certification.

27 A party must demonstrate “compelling reasons” to seal judicial records attached to a  
28 dispositive motion. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).  
29 However, in a non-dispositive motion context, the Court need only find “good cause” to seal a

1 court record, and the “usual presumption of the public’s right of access is rebutted.” *In re*  
2 *Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012).

3 **B. Amazon’s Motion to Seal Exhibit E of Rubenson Declaration**

4 Amazon moves to seal materials filed in connection with its Motion for Partial Summary  
5 Judgment. (Dkt. No. 90.) Specifically, Amazon seeks to keep sealed Exhibit E to the Declaration  
6 of Aaron Rubenson, referencing information about refund rates for Amazon customers. (*Id.*)  
7 Amazon contends that information detailing the rates at which it has provided refunds to its  
8 customers is sensitive business information. (*Id.* at 2–4.) It is Amazon’s practice to rigorously  
9 guard this information’s confidentiality even within the company. (*See* Dkt. No. 91 at 2.)  
10 Notably, while the substance of Amazon’s Motion for Partial Summary Judgment is the subject  
11 of the FTC’s Opposition, the record contains no opposition to the Motion to Seal.

12 There are compelling reasons to seal confidential business information where judicial  
13 documents, if disclosed, could cause a litigant to suffer competitive harm. *In re Elec. Arts, Inc.*,  
14 298 F. App’x 568, 569 (9th Cir. 2008) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,  
15 598 (1978)). The Court finds such compelling reasons here. Amazon’s Motion to Seal (Dkt. No.  
16 90) is GRANTED. Exhibit E to the Rubenson Declaration, as well as the motions containing  
17 references thereto, are to remain sealed and redacted as filed. (Dkt. No. 95 at 37–40, Dkt. Nos.  
18 92, 93, and 94.)

19 **C. The FTC’s Motion to Seal**

20 The FTC also moves to seal several documents attached in support of its Motion for  
21 Summary Judgment. (Dkt. No. 107.) The documents include: thirty-seven (37) exhibits attached  
22 to the Declaration of Miya Tahamim, the FTC’s Motion for Summary Judgment, the  
23 Declarations of Julie Beth Miller and Elizabeth Kwok, the FTC’s Motion in Limine, and fourteen  
24 (14) exhibits attached to the Rahamim Declaration designated confidential by non-party Storm8,  
25 Inc. (*Id.* at 2.) The FTC brings its motion based on designations by Amazon that the materials  
26 contain confidential information. (*Id.*) In response, Amazon indicates that it carefully reassessed

1 the materials appropriate for disclosure and redaction. (Dkt. No. 140 at 2.) Accordingly, Amazon  
2 has withdrawn its confidentiality designation of thirty-seven (37) exhibits, filed public redacted  
3 copies of thirty (30) of them, and asks that only fourteen (14) exhibits remain sealed. (*Id.*)

4 The subject of this second Motion to Seal is in large part the same as the motion addressed  
5 above: Amazon’s interest in keeping specific data related to refund rates, as well as strategic  
6 business plans, confidential. (Dkt. No. 140 at 4.) As this Court has previously ruled, such  
7 “strategic planning and financial information . . . is of a sensitive enough nature that it outweighs  
8 the *de minimus* public interest in access . . . which would largely be commercial in nature.” (*See*  
9 Dkt. No. 46 at 2) (granting previous Motion to Seal.) With respect to the amount of money  
10 damages sought by the FTC, however, there is a heightened public interest in the law  
11 enforcement function of this proceeding; the parties apparently agree that this information should  
12 be made public and have filed unredacted versions of the FTC’s Motion for Summary Judgment  
13 accordingly. (*See* Dkt. No. 144 at 2; Dkt. No. 144-1.)

14 In light of the compelling reasons to seal, and the parties’ apparent consensus about where  
15 redaction and sealing are appropriate, the FTC’s Motion to Seal (Dkt. No. 107) is GRANTED.  
16 However, as outlined in both response briefs, some of the documents presently sealed are  
17 appropriate for unsealing. Accordingly, the parties are ORDERED to re-file the following  
18 documents, this time in unsealed format, within ten (10) days:

Exhibit Number	Docket Entry
14	113 at 9–10
28	114 at 10–31
31	115 at 4–8
44	115 at 9–11
130	120 at 1–12
160	122 at 20–22
176	123 at 1–5

<b>Exhibit Number</b>	<b>Docket Entry</b>
179	123 at 6–12
180	123 at 13–14
186	123 at 15–28
209	124 at 10–13
218	124 at 14–16
302	124 at 17–21
305	125 at 1–39
308	125 at 40–43
350	127 at 73–87
354	127 at 88–97
355	127 at 98–107
474	137 at 1–3
475	137 at 4–6
476	137 at 7–10
477	137 at 11–14
478	137 at 15–17
479	137 at 18–21
480	137 at 22–24
481	137 at 25–28
482	137 at 29–31
483	137 at 32–35
484	137 at 36–38
485	137 at 39–42
486	137 at 43–45

Exhibit Number	Docket Entry
487	137 at 46–49
501	127 at 131–153
506	127 at 221–232
507	127 at 233–245
520	127 at 301–303
526	127 at 304–305

All other documents addressed by the motion originally filed under seal or redaction (Dkt. Nos. 109–112, 116–119, 121, 126, and 128–137) shall remain under seal as filed.<sup>1</sup> The Court pauses briefly to note that the method by which many of the exhibits in question were filed and docketed rendered the Court’s review tremendously burdensome. In the future, if the parties need to file separate exhibits in the form of multiple docket entries in this manner (*see* Dkt. Nos. 113–137), they are expected to cite to the exhibits by their docket entry rather than exhibit name for ease of reference.

### III. CONCLUSION

For the foregoing reasons, both Amazon’s motion to seal (Dkt. No. 90) and the FTC’s motion to seal (Dkt. No. 107) are GRANTED.

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<sup>1</sup> Redacted versions of several documents remaining under seal are available at Dkt. Nos. 142-1, 142-2, 142-3, and 144-1.

1 DATED this 22nd day of March 2016.

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8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE  
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